

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

UNITED STATES OF AMERICA

v.

4:06-CR-00302-WRW

OWEN MCMULLEN

ORDER

Pending is Defendant's *pro se* Motion to Reduce Sentence (Doc. No. 39). Defendant requests a reduction of his sentence under 18 U.S.C. § 3582(c)(2), based on the retroactive application of the crack cocaine penalty reduction imposed by the United States Sentencing Commission, effective March 3, 2008. After reviewing the case, I find that Defendant is not entitled to a sentence reduction.

Not every person sentenced for a crack cocaine offense is eligible for a sentence reduction.¹ Section 1B1.10(b)(2)(B) of the Sentencing Guidelines reads: provides that "if the original term of imprisonment constituted a non-guideline sentence determined pursuant to 18 U.S.C. § 3553(a) and *United States v. Booker*, 543 U.S. 220 (2005), a further reduction generally would not be appropriate."²

When Defendant was sentenced on June 26, 2007, his advisory guideline range was 151-188 months, based on a total offense level of 29 and a Criminal History Category of VI. Under the crack cocaine amendment, Defendant's new guideline range is 130-162 months.

¹See U.S.S.G. § 1B1.10, Reduction in Term of Imprisonment as a Result of Amended Guideline Range (Policy Statement) (March 3, 2008).

²U.S.S.G. § 1B1.10(b)(2)(B).

At sentencing, over the Government's objection, I considered -- and accepted -- Defendant's argument for a downward variance based on the forthcoming crack cocaine amendment.³ Defendant was sentenced to 140 months in prison based on, among other things, the crack cocaine amendment.

CONCLUSION

Since I considered the crack cocaine amendment at sentencing -- and because I still feel that 140 months is "reasonable sentence and not too high"⁴ -- Defendant's Motion to Reduce Sentence (Doc. No. 39) is DENIED.

IT IS SO ORDERED this 12th day of February, 2009.

/s/ Wm. R. Wilson, Jr.
UNITED STATES DISTRICT JUDGE

³At the sentencing, I stated, "I'm going to adopt all [Defendant's] arguments and go down to 144 months over the objection of the Justice Department." I based this sentence on the disparity in crack cocaine sentences and Defendant's "substantial [criminal] record." In fact, in the end, I reduced the sentence to 140 months, and found that to be a reasonable sentence. See Doc. No. 40 at 11, 13.

⁴Doc. No. 40, at 12.